

## UNITED STATES DISTRICT COURT

for the  
District of Colorado

United States of America )

v. )

David J. Lawless )

Defendant )

Case No. 11-MJ-01102-MJW

## CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date of \_\_\_\_\_ in the county of Denver in the \_\_\_\_\_ District of  
Colorado, the defendant violated 18 U. S. C. § §§ 844(i); 924(c) & 921(a)(3) and (4)  
 , an offense described as follows:

See Attachment A attached hereto and herein incorporated by reference

This criminal complaint is based on these facts:

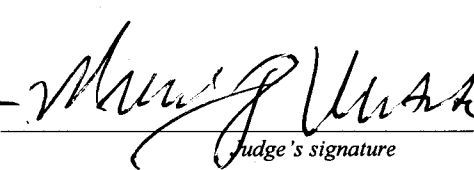
See Affidavit attached hereto as Attachment B and herein incorporated by reference

☒ Continued on the attached sheet.
  
 Complainant's signature

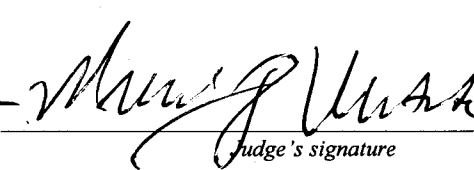
DAVID M. SLAVELY, TFO  
 Printed name and title

Sworn to before me and signed in my presence.

Date:

June 27, 2011 At 4:00 pm   
At

City and state:

Denver, Colorado
  
 Judge's signature  
**MICHAEL J. WATANABE**  
**U.S. MAGISTRATE JUDGE**  
**DISTRICT OF COLORADO**

DEFENDANT: David J. Lawless

YOB: 1980

ADDRESS: In Custody

OFFENSE: **Count 1:** Title 18 U.S.C. § 844(i) - Arson of Building and Other Real Property in Interstate Commerce

**Count 2:** Title 18 U.S.C. § 924(c) and 921(a)(3) and (4) - Use of a Destructive Device During and in Relation to a Crime of Violence

LOCATION OF OFFENSE: Jefferson County, Littleton, CO  
(COUNTY/CITY/STATE)

PENALTY: **Count 1:** NLT 5 years imprisonment, NMT 20 years imprisonment; \$250,000 fine, or both; NMT 5 years supervised release; \$100.00 Special Assessment Fee; and restitution

**Count 2:** NLT 30 years imprisonment, NMT life imprisonment (consecutive to any other sentence imposed); \$250,000 fine, or both; NMT 5 years supervised release; \$100 Special Assessment Fee; and restitution

AGENTS: Investigator David Swavely – JCSO / TFO FBI-JTTF  
Investigator Paul J. Barben – Lakewood PD / TFO ATF

AUTHORIZED BY: Greg Holloway  
Assistant U.S. Attorney

ESTIMATED TIME OF TRIAL:

  X   five days or less           over five days           other

THE GOVERNMENT

  X   will seek detention in this case           will **not** seek detention in this case

The statutory presumption of detention is applicable to this defendant. **(Circle one)**

OCDETF CASE:           Yes      X   No

**ATTACHMENT A**

**COUNT 1**

On or about June 25, 2011, in the State and District of Colorado, the defendant, DAVID J. LAWLESS, did maliciously damage and destroy, and attempt to damage and destroy, by means of fire and an explosive, a building and other real and personal property used in interstate or foreign commerce and used in any activity affecting interstate or foreign commerce.

All in violation of Title 18, United States Code, Section 844(i).

**COUNT 2**

On or about June 25, 2011, in the State and District of Colorado, the defendant, DAVID J. LAWLESS, during and in relation to a crime of violence, and in furtherance of that crime, namely: use of fire and explosive to damage and destroy and attempt to damage and destroy a building and other real and personal property in interstate commerce, in violation of Title 18, United States Code, Section 844(i), as charged in Count 1, did knowingly use and carry, and possess, a destructive device, to wit: an improvised explosive device ("IED"), also known as a homemade bomb.

All in violation of Title 18, United States Code, Section 924(c) and Title 18, United States Code, Sections 921(a)(3) and (4).

**ATTACHMENT B**

**AFFIDAVIT**

1. I, David M. Swavely, Task Force Officer (TFO) assigned to the Federal Bureau of Investigation (FBI), Department of Justice, being duly sworn, hereby state:
2. Your Affiant is an Investigator with the Jefferson County Sheriff's Office, Golden Colorado, and a TFO to the Joint Terrorism Task Force (JTTF). Your Affiant has been assigned as a TFO since January of 2006, and is a sworn and certified Special Deputy United States Marshal. Your Affiant investigates violations of federal law associated with terrorism related offenses, including arson and explosives crimes, firearms offenses, and violations involving arsons of property involved in interstate and foreign commerce. Your affiant is authorized to carry firearms, execute warrants, make arrests for offenses against the United States, and to perform other duties as authorized by law.
3. This affidavit is made in support of a criminal complaint against DAVID JOSEPH LAWLESS date of birth November of 1980, for violations of Title 18, United States Code Sections 844(i) and 924(c): Maliciously damage or destroy, by means of fire or an explosive, any building or real property used in interstate commerce and use of a destructive device to facilitate and use to commit a crime of violence. This affidavit is also in support of an application for two search warrants: (1) for a Toyota Tacoma bearing CO license plate 079OKW, Vehicle Identification Number (VIN) 5TENL42N14Z317739; and (2) for a residence located at 5800 Tower Road, Unit 2412, Denver, Colorado. According to Colorado DMV records, registered to DAVID JOSEPH

LAWLESS, 2281 Stacy Drive, Denver, CO 80221. The statements set forth in this affidavit are based upon my training and experience, consultation with other experienced investigators and Agents, and investigative reports and other documents. This affidavit is intended to set forth probable cause in support of a criminal complaint and does not purport to set forth all of my knowledge regarding the investigation.

4. On June 25, 2011, at approximately 00:38 hours, an activated alarm was immediately sent to Niscayah Alarm Company servicing Borders retail store located in the Colorado (CO) Mills Mall, 14500 West Colfax Avenue (Ave), Suite 145, Lakewood, 80401, County of Jefferson, State of Colorado. Subsequently, the assistant manager of Borders, Timothy Whitler, responded to the location and arrived at 01:13 hours, reporting that he saw a public entrance door window smashed and a propane tank inside the store.
5. On June 25, 2011, at approximately 00:41 hours, the Lakewood Police Department (LPD), Lakewood, Colorado (CO) 80226-3106 was dispatched to the activated alarm at the Borders retail store. Upon arrival, LPD discovered the bottom half of a glass entrance/exit door of the Borders retail store shattered and cleared to facilitate entry into the business from the outside. While securing Borders, LPD officers discovered two (2) suspected explosives devices inside. The Jefferson County Sheriff's Office (JCSO) Bomb Squad subsequently responded to the scene.

6. The JCSO Bomb Squad examined the scene and located three (3) suspect explosive devices. The first device was located outside the mall near the entrance to Borders and two (2) additional devices were found inside the Borders retail store.
7. The device located outside the mall entrance was discovered in one of the garbage containers. The device consisted of an aluminum water bottle type container with a removable plastic lid, filled with suspected smokeless powder, and an improvised pyrotechnic type fuse. The device was taped to a small propane tank. The device partially functioned and propelled the plastic lid off the aluminum water bottle. The propane tank was not damaged and remained attached to the propane tank. A significant amount of suspected smokeless powder was also present in and around the device, as well as near the front door of the mall entrance. A scorch mark was visible on the ground outside the door as well.
8. A similar explosive device was located within the Borders store which also consisted of an aluminum water bottle with a removable plastic lid, filled with suspected smokeless powder and an improvised pyrotechnic type fuse. The device partially functioned and propelled the plastic lid off the aluminum container. A significant amount of suspected smokeless powder was also present in and around the device. Embedded in the ceiling tile above the device were several pieces of unknown material that appeared to have come from an explosion.

9. The third device consisted of a large propane container placed on a table within the store.

Nearby, a candle was placed on a separate table. When discovered, the candle was not lit, although the wick had been burned. No initiation occurred in relation to this device.

10. The JCSO Bomb Squad determined the devices were safe. No render safe procedures were conducted relative to any of the devices.

11. The FBI Evidence Response Team (ERT) processed the scene by collecting evidence which was transported to the FBI laboratory in Quantico, VA. While processing the scene, investigators found what appeared to be blood at the Borders store.

12. Investigators reviewed security camera footage from the Borders store. Video images show a person who appears to be a white male breaking into the glass public entrance door. From the video, it also appears that the person injured his hand while breaking into the store. The Borders store is a business that operates in and affects interstate commerce.

13. On June 25, 2011 the FBI was notified by LPD at approximately 08:05 hours that several of the front windows of Best Buy store located at 1400 Denver West Boulevard (Blvd), Lakewood, CO 80401 were smashed open from the outside. The Best Buy is located approximately ½ mile from the Border's Book store. No evidence was recovered from the scene at Best Buy.

14. The same date at approximately 00:52 hours, outdoor video surveillance at the Best Buy, revealed a white male driving a green Toyota Tacoma in and out of the camera view from 00:52 through 00:59 hours.

15. On June 25, 2011 at approximately 02:54 hours, the JCSO responded to assist the West Metro Fire and Rescue Department (WMFD) regarding an explosion and fire incident reported by guests at a Marriott Hotel located at 1717 Denver West Marriott Blvd., Golden, CO. The Marriott is located approximately ½ mile from the Best Buy, and approximately 1 mile from the Border's Book store. Deputies at the scene recovered what appeared to be a melted plastic container from the scene. Later observations by ATF showed the container was likely for smokeless powder. This evidence was released to the FBI for processing at their laboratory in Quantico, VA.

16. On June 26, 2011, Agents from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) obtained additional evidence from the scene to process at the FBI laboratory. Witnesses who were sitting on an exterior patio outside their room at the Marriott reported that an explosion occurred at the time indicated, followed by a fire involving a bush located about 15 feet from where they were sitting outside the Marriott. They did not see any persons or vehicles prior to the incident.

17. Outdoor surveillance cameras with several views at the Target retail store in the CO Mills Mall, located at 14500 West Colfax Ave, Suite 307, revealed a dark colored Toyota Tacoma, single cab, with no passengers driving in and around the CO Mills Mall parking



lot, notably from 00:17 hours through 01:07 hours on June 25, 2011. Target's surveillance equipment automatically synchronizes time by satellite signals and is considered reasonably accurate.

18. The outdoor surveillance camera at the Neiman Marcus retail store located at 14500 West Colfax Ave, Suite 241, revealed a dark colored Toyota Tacoma, single cab, driving through their camera view, notably between 00:10 hours and 01:00 hours. However, the time on the surveillance equipment at Neiman Marcus was last calibrated and synchronized March or April, 2011. Neiman Marcus' video surveillance time is approximately 6 minutes slower than actual time.

19. On June 25, 2011, at approximately 18:37 hours Colorado State Patrol (CSP) responded to a traffic incident on Colorado 103 at mile post ten (10) in Clear Creek County, State of CO where they encountered a single vehicle crash. The driver was later identified by his Colorado Driver's License as DAVID JOSEPH LAWLESS, date of birth November of 1980. At the time of the crash, and before State Patrol arrived, two (2) off-duty Arapahoe County Sheriff's Deputies were on scene and attempted to render aid to LAWLESS, but he attempted to leave the scene. LAWLESS, who appeared to be intoxicated, attempted stab the Deputies with scissors while they were detaining him. LAWLESS was arrested by CSP for Driving Under the Influence (DUI) and felony menacing. LAWLESS was booked into Clear Creek County Jail. LAWLESS was wearing a gray colored t-shirt, blue jeans and gray colored skater style shoes. LAWLESS also had an injury to his hand that required medical attention.

20. The vehicle operated by LAWLESS is a green Toyota Tacoma bearing CO license plate 079OKW, Vehicle Identification Number (VIN) 5TENL42N14Z317739. According to Colorado DMV records, the vehicle is registered to DAVID JOSEPH LAWLESS, 2281 Stacy Drive, Denver, CO 80221, with an expiration date of November of 2011. The description of this vehicle matches that of the dark colored Toyota Tacoma in the aforementioned outdoor surveillance camera videos taken at the Colorado Mills Mall area at the time of the incident at the Borders store.

21. The vehicle was impounded and towed by Allied Towing under contract by CSP and taken to the Allied Towing storage lot located at 2821 Colorado Boulevard, Idaho Springs, Colorado.

22. LAWLESS is currently detained in the custody of Clear Creek County Jail. Investigators contacted LAWLESS on the morning of June 27, 2011. After being fully advised of his constitutional rights, LAWLESS voluntarily waived his rights and agreed to talk to investigators. LAWLESS admitted that he broke into the Colorado Mills Mall Borders store on June 25, 2011 and placed the explosive devices. LAWLESS admitted that he lit the devices with fire in an attempt to have them detonate. LAWLESS explained how and where he purchased the various components to construct the devices. LAWLESS also told investigators that there was another device in his truck. LAWLESS further explained that he researched how to make the devices on the internet from a computer at

his residence located at 5800 Tower Road, Unit 2412, Denver, Colorado. LAWLESS also said he has components for the devices at his residence as well.

23. LAWLESS was arrested in 2005 by the Glendale Police Department, Glendale, CO for an Explosives Charge. LAWLESS was charged in Arapahoe County District Court (Case 2005CR2812), and he plead guilty to one (1) felony count of Possession of an Explosive/Incendiary Device and one (1) misdemeanor count of Possession of an Illegal Weapon. LAWLESS was sentenced to two (2) years of probation.

#### SEARCHING COMPUTERS

24. As described above and in Attachment B, this application seeks permission to search and seize records, computers, and electronic storage media (including cellular phones or other personal media devices) that might be found at <sup>David Lawless'</sup> [REDACTED] residence, located at <sup>5800 Tower Road, Unit 2412</sup> [REDACTED] Denver, Colorado. Some of these electronic records might take the form of files, documents, and other data that is user-generated. Some of these electronic records, as explained below, might take a form that becomes meaningful only upon forensic analysis.

25. For example, based on knowledge, training, and experience, your affiant knows that a powered-on computer maintains volatile data. Volatile data can be defined as active information temporarily reflecting a computer's current state including registers, caches, physical and virtual memory, network connections, network shares, running processes, disks, floppy, tape and/or CD-ROM and printing activity. Collected volatile data may

contain such information as opened files, connections to other computers, passwords used for encryption, the presence of anti-forensic tools, or the presence of programs loaded in memory that would otherwise go unnoticed. Volatile data and its corresponding evidentiary value is lost when a computer is powered-off and unplugged.

26. Based on knowledge, training, and experience, your affiant knows that computer files or remnants of such files can be recovered months or even years after they have been downloaded onto a storage medium, deleted, or viewed via the Internet. Electronic files downloaded to a storage medium can be stored for years at little or no cost. Even when files have been deleted, they can be recovered months or years later using forensic tools. This is so because when a person “deletes” a file on a computer, the data contained in the file does not actually disappear; rather, that data remains on the storage medium until it is overwritten by new data. Therefore, deleted files, or remnants of deleted files, may reside in free space or slack space-that is, in space on the storage medium that is not currently being used by an active file-for long periods of time before they are overwritten. In addition, a computer’s operating system may also keep a record of deleted data in a “swap” or “recovery” file.

27. Also, again based on training and experience, wholly apart from user-generated files, computer storage media-in particular, computers’ internal hard drives-contain electronic evidence of how a computer has been used, what it has been used for, and who has used it. This evidence can take the form of operating system configurations, artifacts from operating system or application operation, file system data structures, and virtual memory

“swap” or paging files. Computer users typically do not erase or delete this evidence, because special software is typically required for that task. However, it is technically possible to delete this information. Data on the storage medium not currently associated with any file can provide evidence of a file that was once on the storage medium but has since been deleted or edited, or of a deleted portion of a file (such as a paragraph that has been deleted from a word processing file). Web browsers, e-mail programs, and chat programs store configuration information on the storage medium that can reveal information such as online nicknames and passwords. Operating systems can record additional information, such as the attachment of peripherals, the attachment of USB flash storage devices or other external storage media, and the times the computer was in use. Computer file systems can record information about the dates files were created and the sequence in which they were created.

28. As further described in Attachment B, this application seeks permission to locate not only computer files that might serve as direct evidence of the crimes described on the warrant, but also for evidence that establishes how computers were used, the purpose of their use, who used them, and when.

29. Similarly, files that have been viewed via the Internet are sometimes automatically downloaded into a temporary Internet directory or “cache.” The browser often maintains a fixed amount of hard drive space devoted to these files, and the files are only overwritten as they are replaced with more recently viewed Internet pages or if a user takes steps to delete them.

30. User attribution” evidence can also be found on a computer and is analogous to the search for “indicia of occupancy” while executing a search warrant at a residence. For example, registry information, configuration files, user profiles, e-mail, e-mail address books, “chat,” instant messaging logs, photographs, and correspondence (and the data associated with the foregoing, such as file creation and last accessed dates) may be evidence of who used or controlled the computer or storage medium at a relevant time.
31. Searching Computer(s) for the evidence described in the attachment may require a range of data analysis techniques. For example, information regarding user attribution or Internet use is located in various operating system log files that are not easily located or reviewed. Or, a person engaged in criminal activity will attempt to conceal evidence of the activity by “hiding” files or giving them deceptive names. As explained above, because the warrant calls for records of how a computer has been used, what it has been used for, and who has used it, it is exceedingly likely that it will be necessary to thoroughly search storage media to obtain evidence, including evidence that is not neatly organized into files or documents. Just as a search of a premises for physical objects requires searching the entire premises for those objects that are described by a warrant, a search of this premises for the things described in this warrant will likely require a search among the data stored in storage media for the things (including electronic data) called for by this warrant. Additionally, it is possible that files have been deleted or edited, but that remnants of older versions are in unallocated space or slack space. This, too, makes it exceedingly likely that in this case it will be necessary to use more thorough techniques.

32. Based upon knowledge, training and experience, your affiant knows that a thorough search for information stored in storage media often requires agents to seize most or all storage media to be searched later in a controlled environment. This is often necessary to ensure the accuracy and completeness of data recorded on the storage media, and to prevent the loss of the data either from accidental or intentional destruction. Additionally, to properly examine the storage media in a controlled environment, it is often necessary that some computer equipment, peripherals, instructions, and software be seized and examined in the controlled environment. This is true because of the following:

a. The nature of evidence. As noted above, not all evidence takes the form of documents and files that can be easily viewed on site. Analyzing evidence of how a computer has been used, what it has been used for, and who has used it requires considerable time, and taking that much time on premises could be unreasonable.

b. The volume of evidence. Storage media can store the equivalent of millions of pages of information. Additionally, a suspect may try to conceal criminal evidence; he or she might store it in random order with deceptive file names. This may require searching authorities to peruse all the stored data to determine which particular files are evidence or instrumentalities of crime. This sorting process can take weeks or months, depending on the volume of data stored, and it would be impractical and invasive to attempt this kind of data search on-site.

c. Technical requirements. Computers can be configured in several different ways, featuring a variety of different operating systems, application software, and configurations. Therefore, searching them sometimes requires tools or knowledge

that might not be present on the search site. The vast array of computer hardware and software available makes it difficult to know before a search what tools or knowledge will be required to analyze the system and its data on-site. However, taking the storage media off-site and reviewing it in a controlled environment will allow its examination with the proper tools and knowledge.

d. Variety of forms of electronic media. Records sought under this warrant could be stored in a variety of storage media formats that may require off-site reviewing with specialized forensic tools.

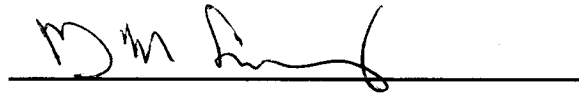
33. Based on training and experience, your affiant further states that if evidence located on a computer as described on Attachment B appears to relate to criminal acts other than those outlined in this affidavit, those items will not be further examined unless and until a search warrant is applied for and issued for evidence of any such separate criminal acts.

### **CONCLUSION**

34. Based upon the foregoing, your affiant believes there is probable cause to arrest LAWLESS for violations of 18, United States Code, Sections 844(i) and 924(c). Furthermore, there is probable cause to search: (1) a Toyota Tacoma bearing CO license plate 079OKW, Vehicle Identification Number (VIN) 5TENL42N14Z317739; and, (2) a residence located at 5800 Tower Road, Unit 2412, Denver, Colorado.

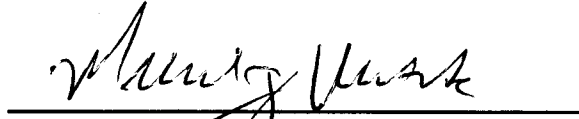
**I, David M. Swavely, being duly sworn according to law, depose and say that the facts stated in the foregoing affidavit are true and correct to the best of my knowledge, information and belief.**





**David M. Swavely,**  
**TFO, Jefferson County Sheriff's Office**  
**Federal Bureau of Investigation, Joint Terrorism Task Force**

Sworn to and subscribed before me this 27<sup>th</sup> day of June, 2011. At 4:00 pm.



**UNITED STATES MAGISTRATE JUDGE**  
**UNITED STATES DISTRICT COURT**  
**DISTRICT OF COLORADO**